

# PACKET OF MATERIALS FOR THE JUNE 19, 2019 PLANNING BOARD MEETING

**Issued June 14, 2019  
@ 11:30 AM**

**Issued on June 18, 2019  
@ 1:30 PM**

ITEM		
Cover page with date	✓	
Agenda	✓	
Minutes for approval	✓	
<b>Supporting Documents</b>		
SP-2018-07 Jordan TA-1	NA	
Final draft order for dormitory	✓	
Final draft order for procedure for site plan review process	✓	
<b>Other</b>	<ul style="list-style-type: none"> <li>• One comment on dormitory</li> <li>• Bearor's opinion on TA1 dated 04/16/19</li> </ul>	<ul style="list-style-type: none"> <li>• One Comment on dormitory</li> <li>• Notice of violation re. Jordan (107-078-000)</li> </ul>

**Michele Gagnon**

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**From:** jmahoney <jmahoney@town.berlin.ct.us>  
**Sent:** Monday, June 17, 2019 9:33 AM  
**To:** mgagnon@barharbormaine.gov  
**Subject:** Commnets on LUO Amendments Concerning Employee Dormitory, Rooming House and Workforce Housing  
**Attachments:** Bar Harbor LUO comments 6-19rev2.doc

Hi Michele

Thanks for speaking with me this morning. Attached are comments from myself and my wife. I plan to attend the Public Hearing on Thursday but please contact me if you can share any additional information before then.

Regards

Jim Mahoney

860-681-5602

June 17, 2019

Michele Gagnon  
Town Planner  
Town of Bar Harbor  
93 Cottage Street  
Bar Harbor, ME

Re: Comments on Proposed Land Use Ordinance Amendment related to Employee Dormitory, Rooming House and Workforce Housing

Dear Ms. Gagnon,

We offer the following comments on the proposed LUO amendment as it pertains to the downtown residential district where we reside. In general we think that the Town should give priority in its LUO to promoting year round residential uses in residential zones. We do not think that Workforce Dormitories and Rooming Houses will primarily provide year round residences and this is indicated in the details of the proposal including that one off-street parking space is required for the rooming house use and only 1 parking space per 10 occupants is required for the workforce dormitory use.

There is already significant economic pressure to convert year round housing units in the downtown residential zone to short term rentals. This proposal would allow significant density of occupancy with little required parking and no apparent standards for living area per occupant or family. It would seem that development of this type might displace existing lower density residential uses such as single-family homes. We do not think that it is appropriate to add uses to the downtown residential zone that will potentially displace much needed year round residential uses.

We live on Atlantic Avenue. Atlantic Avenue and many nearby streets are primarily developed with single-family homes but it also has a motel and bed and breakfasts. We think that this is a model of the type of neighborhood that the Town should be planning for in the downtown residential zone. We are fortunate that many of the houses on our street are occupied by year round residents. However, some houses are now used for weekly rentals, a few houses are used only seasonally and other neighbors take a winter break so it is much quieter in the winter but our street has enough of a core of year round residents so that it does not go dark in the winter.

Some of the other streets in the downtown residential zone have even fewer year round residents than Atlantic Avenue. We think the Planning Board should be thinking about changes to the downtown residential zone that will stabilize and promote housing for year round residents, not changes that will further threaten year round residential uses.

The LUO states that a residential district is intended to “provide an area that restricts intensive uses so that residents may enjoy a measure of quietness and privacy in their homes.” We do not think that the proposed changes in the downtown residential zone will promote this goal. With the proposed changes we can foresee intensive developments even on small lots that would disturb the quiet enjoyment of existing year round residential properties. The minimum lot size in the downtown residential zone is 5,000 square feet, the maximum coverage is 75% and the required minimum lot area per family is 2,500 square feet. With the proposed changes to the definition of families, the occupancy level could be much higher than is now permitted in the zone. Instead of 2 families, a 5,000 square foot lot could accommodate a workforce dormitory with a large number of people. We don’t know how many people could be accommodated in an employee dormitory because there is no stated occupancy limit.

The changes proposed would also exacerbate existing parking and congestion problems. Many streets in the downtown residential zone are narrow. The streets are not wide enough to accommodate two ten-foot wide travel lanes plus an eight-foot width for parallel parking but parking is allowed. In order to pass a car coming in the opposite direction on Atlantic Avenue we often need to look for a space to pull over to let the other car pass. At the intersection with Main Street the peril is even greater as cars pull in and out of Main Street traffic and sight lines are poor because cars are parked near the corner on Main Street and near the end of Atlantic. The proposed permitting of workforce dormitories and rooming houses will make the traffic situation worse. Even though little parking is required, the ordinance changes don’t prohibit the inclusion of additional off-street parking related to these uses. Workforce dormitories would allow “more than” 16 residents. No maximum number of occupants is stated for workforce dormitories. The large number of occupants permitted in a workforce dormitory could add a significant number of cars to an already hazardous traffic system and add significant amounts of paved surfaces in a residential neighborhood. On the other hand, if no on-site parking is provided for a particular project then occupants with cars or their visitors will likely use the already under-supplied on-street parking. It is also likely that these uses will be mostly occupied in the tourist season when parking is already at a premium.

Our downtown residential streets, including Atlantic Avenue, are part of the charm that attracts people to visit Bar Harbor. Many tourists take a walk down Atlantic Avenue or Derby or other streets off Main Street heading to the water to enjoy seeing the quiet residential neighborhoods. The houses are well maintained, many have beautiful gardens, and others are historically significant. As a community, we need to vigilantly guard these areas and protect their character. We don’t think that Workforce Dormitories and Rooming Houses are compatible uses in the downtown residential zone.

The use of the terms Workforce Housing and Workforce Dormitory in the proposed LUO amendment is confusing. Workforce housing is referenced in the Warrant Article but not in the text change proposals. Workforce Dormitory is proposed in the text changes but not listed in the Warrant Article heading. Are they intended to mean the same thing? Do building code provisions require a minimum square footage per person, and a minimum ratio of bathroom and shower facilities for rooming houses and workforce dormitories? How would the Town evaluate the maximum occupancy levels for the structure and how would it enforce occupancy limits on these facilities?

In general we do not think that the proposal to add workforce dormitories and rooming houses as site plan approval uses in the downtown residential zone is appropriate and consistent with the Comprehensive Plan. In addition, the proposed changes are not crafted carefully enough because they do not set an upper limit for occupancy of workforce dormitories, there is a lack of consideration of parking needs and ramifications and there is confusion in the use of the terms workforce housing and workforce dormitories.

Residential zones are intended to "provide an area that restricts intensive uses so that residents may enjoy a measure of quietness and privacy in their homes." We encourage the Planning Board to take a step back and carefully consider the downtown residential zone in order to find ways to preserve its important attributes and to enhance opportunities for year round residential use at a scale that is compatible with the neighborhood.

Thank you for consideration of our comments.

Sincerely,

Jim & Joyce Mahoney  
22 Atlantic Avenue



JORDAN

## TOWN OF BAR HARBOR Code Enforcement Division

93 Cottage Street, Suite I  
Bar Harbor, Maine 04609-1400  
Tele. 207-288-3329 Fax 207-288-3032  
E-Mail: [ceo@barharbormaine.gov](mailto:ceo@barharbormaine.gov)

Angela M Chamberlain

Code Enforcement Officer  
Building Inspector  
Electrical Inspector  
Plumbing Inspector

June 17, 2019

Mr. Robert L Jordan  
Ms. Kathleen A Jordan  
81 Ledgelawn Avenue  
Bar Harbor, ME 04609

### NOTICE OF VIOLATION

**Re: Violations of the Bar Harbor Land Use Ordinance  
Property Located at 81 Ledgelawn Avenue, Bar Harbor, Maine  
107-078-000**

Dear Mr. & Ms. Jordan:

Your neighbor has informed me that you are again advertising and offering for rent the second floor of your garage for less than 30 days in violation of the Land Use Ordinance. This is also a violation of the terms of the December 21, 2018 consent judgment between you and the Town of Bar Harbor.

Please note the following findings I made August 22, 2014, June 18, 2015, and again on August 23, 2017 in my previous notices of violation. These findings have not changed, nor has the ordinance changed to allow you to use your property in this manner.

- The above noted property is located within the Downtown Residential district. Appendix C of the Bar Harbor Land Use Ordinance clearly lists the permitted uses in the Downtown Residential district. There are three types of transient accommodations allowed. They are TA-1, TA-3, and TA-4.
- TA-1 is defined as a "Bed-and-breakfast accommodations in the private, year-round residence of the host family who live on the premises (one to three rooms; maximum six guests). Breakfast is the only meal provided."
- TA-3 is defined as "An existing building, constructed and completed prior to June 10, 1986, where for compensation lodging is provided (four to 10 rooms). TA-3 is permitted in districts where it is felt that lodging for transients is necessary to preserve or maintain many of Bar Harbor's residential structures".
- TA-4 is defined as "An existing building, constructed and completed prior to June 10, 1986, where for compensation lodging is provided (11 to 25 rooms). TA-4 is permitted in districts where it is felt that lodging for transients is necessary to preserve or maintain many of Bar Harbor's residential structures".

- A transient is defined as "A person staying at a place that does not constitute his or her home or usual dwelling unit for less than 30 days."
- You may not be permitted as a vacation rental because you do not meet the definition of a vacation rental which is "The use of a **dwelling unit** for rent to a family for a period of less than 30 days and a minimum of five days. Time-share property, as most recently defined in 33 M.R.S.A § 591, is also included in this definition. This area is not a dwelling as defined.

**Pursuant to Section 125-100 of the Bar Harbor Land Use Ordinance of the Town of Bar Harbor, Maine you are hereby notified of the following violations on the above-referenced property:**

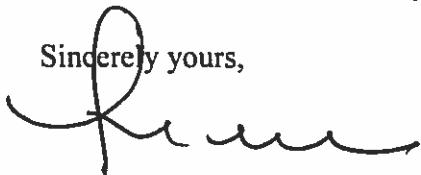
Section 125-7 of the Bar Harbor Land Use Ordinance states that "It is the intent of this chapter that any use not specifically allowed as either a permitted use or a permitted use with site plan approval is specifically prohibited."

**You are hereby ORDERED to take the following actions to correct this violation:**

1. **Immediately cease using and advertising the second floor of the garage as a rental for transients for less than 30 days.**

I thank you in advance for your cooperation in this matter. If you have any questions, please feel free to contact me at (207) 288-3329 Monday through Friday 8:30 AM to 5:00 PM.

Sincerely yours,



Angela M. Chamberlain  
Code Enforcement Officer

Cc: Matthew R Bartlett, Fire Chief  
Cornell Knight, Town Manager  
✓ Michele Gagnon, Planning Director  
Bar Harbor Town Council  
Violation File  
Building Permit File  
Ed Bearor, Attorney







STATE OF MAINE  
HANCOCK, ss.

DISTRICT COURT  
Location: Ellsworth  
Docket No.: 01-18-221

TOWN OF BAR HARBOR, a municipal corporation located in Hancock County, Maine,

Plaintiff

v.

ROBERT L. JORDAN, JR., a resident of Bar Harbor, Hancock County, Maine,

KATHLEEN A. JORDAN, a resident of Bar Harbor, Hancock County, Maine,

Defendants

**CONSENT JUDGMENT**

Plaintiff, Town of Bar Harbor (the "Town"), by and through its attorneys, Rudman Winchell, and Defendants, Robert L. Jordan, Jr. and Kathleen A. Jordan ("Defendants"), hereby enter into this Consent Judgment to settle this Rule 80K land use action and avoid further court proceedings, under the following stipulations and terms:

**STIPULATIONS**

1. Defendants, husband and wife, occupy and own real property located at 81 Ledgelawn Avenue, Bar Harbor, Maine (the "Property"), by virtue of a Quitclaim Deed recorded August 20, 1996, in the Hancock County Registry of Deeds in Book 2575, Page 272.
2. Defendants violated the Town's Land Use Ordinance ("LUO") and the terms of previously issued approvals and permits when they added a <sup>Food preparation area</sup> kitchen and rented the second floor of their garage to transients for intervals of less than 30 days.
3. On August 16, 2005, the Bar Harbor Board of Appeals granted Defendants' application to relocate an existing nonconforming garage by three feet in order to meet the five-

foot rear setback for accessory non-residential structures and build a second story, subject to the stipulation that the garage not be used as a dwelling.

4. On July 24, 2008, the CEO issued Defendants a building permit to convert the second floor into a guest bedroom; the permit did not authorize Defendants to construct a kitchen.

5. Since at least the summer of 2014, Defendants have rented this space to transients for intervals of less than 30 days.

6. Defendants constructed kitchen facilities and have used or caused the space to be used as a dwelling.

7. Both of these activities violate the terms of the 2005 approval and 2008 permit.

8. These activities are not permitted uses and violate sections 125-7 and 125-22 of the LUO.

9. Defendants' unpermitted activities constitute a nuisance pursuant to LUO section 125-99.

10. Therefore, the Town is entitled to attorneys' fees, costs, and civil penalties for the violations cited above on a per-day basis in accordance with LUO section 125-101 and 30-A M.R.S. § 4452.

#### TERMS

11. Defendants shall not advertise for rent the second floor of the garage to transients for intervals of less than 30 days.

12. Defendants shall not rent the second floor of the garage to transients for intervals of less than 30 days.

13. No later than March 21, 2019, Defendants shall submit to the Town of Bar Harbor Planning Board an application for site plan approval to commence Transient Accommodations (TA-1)<sup>1</sup> on the Property.

14. Once filed, Defendants shall not delay or cause to be delayed the Planning Board's consideration of Defendants' application.

15. Should Defendants' application be denied or should Defendants otherwise fail to obtain said approval, Defendants shall not rent or advertise for rent the second floor of the garage to transients for intervals of less than 30 days or otherwise resume or conduct any activity concerning the garage that is not in conformance with any applicable provisions of the LUO.

16. Upon reasonable notice, Defendants agree to permit the Town Code Enforcement Officer ("CEO") to enter and inspect the Property to ensure compliance with these terms.

17. No later than June 21, 2019, Defendants shall pay the Town's attorneys' fees in the amount of \$1,500.00 and costs in the amount of \$411.74.

18. If Defendants comply with all terms of this Consent Judgment, no civil penalties shall be imposed.

19. If Defendants fail to comply with any term of this Consent Judgment, a civil penalty of \$100 per day from the date that the Complaint was served to Defendants—October 26, 2018—until such date as the Defendants' Property is brought into compliance, as determined by the CEO, shall be imposed pursuant to LUO section 125-101 and 30-A M.R.S. § 4452.

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<sup>1</sup> Transient Accommodations (TA-1) is defined as "Bed-and-breakfast accommodations in the private, year-round residence of the host family who live on the premises (one to three rooms; maximum six guests). Breakfast is the only meal provided." LUO, § 125-109 (Transient Accommodations).


20. Further, if Defendants fail to comply with any term of this Consent Judgment, the Town shall be awarded any additional attorneys' fees incurred since the date of this Consent Judgment.

The Clerk shall reference this Consent Judgment on the Docket pursuant to M.R. Civ. P. 79(a).

Dated: December 21, 2018

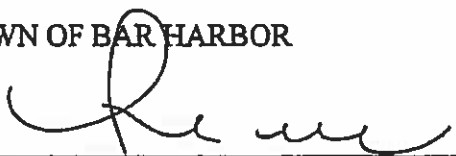
  
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JUDGE, MAINE DISTRICT COURT

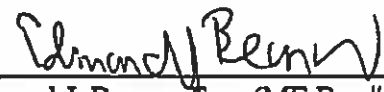
DEFENDANTS

  
\_\_\_\_\_  
ROBERT L. JORDAN, JR.  
81 Ledgelawn Avenue  
Bar Harbor, ME 04609

\_\_\_\_\_  
KATHLEEN A. JORDAN  
81 Ledgelawn Avenue  
Bar Harbor, ME 04609

TOWN OF BAR HARBOR

  
\_\_\_\_\_  
By: Angela M. Chamberlain  
Code Enforcement Officer  
Town of Bar Harbor  
93 Cottage Street  
Bar Harbor, ME 04609  
(207) 288-3329

  
\_\_\_\_\_  
By: Edmond J. Bearor, Esq. (ME Bar # 3904)  
Stephen W. Wagner, Esq. (ME Bar # 5621)  
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Bangor, ME 04402-1401  
(207) 992-2626